

ISSUE DATE: February 19, 1999

DOCKET NO. P-407, 5654/M-98-1920

ORDER REJECTING INTERCONNECTION AGREEMENT, REQUIRING FURTHER
FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application for Approval of
an Interconnection Agreement Adopted Under
the Federal Telecommunications Act of 1996,
Section 252(i)

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PROCEDURAL HISTORY

On December 30, 1998, Direct Communications, LLC (Direct) filed its petition proposing to adopt the agreement between AT&T and GTE-Minnesota as approved by the Commission on August 19, 1997 in Docket No. P-442, 407/M-97-772. That agreement encompasses the resale of services and the interconnection of facilities. The term of the GTE/AT&T Agreement is three years and the Agreement is automatically renewed for an additional year unless the parties give notification of termination.

On January 8, 1999, the Minnesota Department of Public Service (the Department) filed comments recommending that the Commission approve the agreement as filed.

The Commission met on February 2, 1998 to consider this matter.

FINDINGS AND CONCLUSIONS

I. DIRECT'S PROPOSED INTERCONNECTION AGREEMENT

Direct asked the Commission to approve its adoption of the GTE Midwest and AT&T Communications Interconnection Agreement (GTE/AT&T Agreement) approved by the Commission on August 19, 1997 in Docket No. P-442, 407/M-97-772.

The GTE/AT&T Agreement referenced by Direct contains the terms and conditions for interconnection, local resale, access to network elements and ancillary services. The GTE/AT&T Agreement also contains the various provisions covering interim number portability, service quality standards, dispute resolution, notices, amendments and assignments. In addition, the

GTE/AT&T Agreement specifies the term of the Agreement, billing, payment, liability, taxes, indemnification and other general provisions. The term of the GTE/AT&T Agreement is for three years and is automatically renewed for an additional year unless parties give notification of termination.

II. COMMISSION ANALYSIS

The Federal Telecommunications Act of 1996 (the Act) permits telecommunications companies to negotiate an interconnection agreement with an incumbent local exchange carrier (ILEC) to interconnect with and use the incumbent's network for the purpose of providing competitive local exchange service. The Act specifies the Commission's role with respect to a negotiated agreement for the resale of local exchange service.

Direct has proposed that the Commission approve an interconnection agreement that the Commission previously approved. Although the interconnection agreement selected by the parties resulted from an arbitration, the parties' selection of this agreement makes their agreement the result of negotiation and it will be reviewed as such. Accordingly, the relevant portion of Section 252(e) states:

(e) Approval by State Commission.--

(1) Approval Required.--Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for Rejection.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by **negotiation** under subsection (a) if it finds that--

(i) an agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity....

The Commission has reviewed the proposed agreement and finds that, for the most part, it is acceptable. The two issues warrant discussion, however. In both instances the Commission finds that the identified portions of the agreement must be modified to be acceptable.

It is true that the GTE/AT&T Agreement that Direct seeks to adopt has been approved by the Commission. See the Commission's August 19, 1997 Order in Docket No. P-442, 407/M-97-772. In subsequent Orders, however, the Commission has consistently held that it may reject the adoption of previously-approved agreements and require modifications in the public interest. For example, in Docket Nos. P-421/EM-97-1417 (New Cell/US WEST) and P-407, 5139/M-98-289 (GTE /GTE Communications) P-407, 466/M-96-1111 (Sprint/GTE) the Commission rejected the adoption of previously approved agreements and required modifications. In the Orders in those dockets, the Commission stated:

The Commission does not read 47 U.S.C. § 252(i) to preclude the Commission from modifying the terms of previously-approved contracts in order to apply the insight and experience it has gained through numerous interconnection proceedings. To hold otherwise would be poor public policy and would also render meaningless the Act's requirement that negotiated agreements, including § 252(i) agreements, be submitted for state commission approval.

In Orders subsequent to its August 19, 1997 Order approving the AT&T/GTE Agreement, the Commission has required notice of assignment and Commission review of the decisions of arbitrators.

A. DISPUTE RESOLUTION

Consistent with the Commission's findings in previous dockets that provide for Commission review and acknowledgment of the Commission's ongoing authority over the independent arbitrator's decision is required by the public interest, the Commission will reject the dispute resolution section as proposed.

The Commission notes that inserting the following language into Attachment 1 Sections 11.1 and 11.2 on **Alternative Dispute Resolution** would correct the deficiency:

Section 11.1

The Parties shall provide to the Commission, the Department of Public Service, and the Office of Attorney General, Residential Utilities Division, a copy of each arbitration decision rendered under this section.

Section 11.2

(c) the Commission modifies, rejects or suspends the arbitrator's decision within 45 days after the arbitrator's decision is filed with the Commission and the matter is within the Commission's jurisdiction.

B. ASSIGNMENT

Similarly, as the Commission has noted in recent interconnection Orders, the failure to provide notice of assignment to the Commission is inconsistent with the public interest. Accordingly, the Commission finds that the public interest requires that additional language providing for such notice should be inserted into Section 23.1, **Delegation and Assignment**.

Adding the following language to Section 23.1 would correct the deficiency:

Any Party seeking to make an assignment or transfer pursuant to this provision shall provide the Minnesota Public Utilities Commission at least sixty (60) days prior written notice of any such assignment or transfer.

III. COMMISSION ACTION

Pursuant to the preceding analysis, the Commission will reject the proposed agreement and identify appropriate corrective language as stated above. In addition, the Commission will direct the parties to either refile for approval under § 252(e), within two weeks of this Order, an agreement that corrects the deficiencies identified by the Commission or, if the parties cannot agree on language that corrects these deficiencies consistent with the Order, file a notice to that effect with the Commission within two weeks of the date of this Order. The contract will be effective on the date the parties file a conforming agreement.

ORDER

1. The interconnection agreement proposed by Direct Communications, LLC (Direct or the Company) is rejected for reasons stated in the text of this Order.
2. Within two weeks of the Commission's Order, Direct and GTE shall either refile for approval under § 252(e), an executed agreement that corrects the deficiencies identified by the Commission or, if the parties cannot agree on language that corrects these deficiencies consistent with the Order, file a notice to that effect.
3. The parties' refiled contract shall be effective on the date the parties file a conforming agreement, i.e. one consistent with this Order.
4. The Executive Secretary shall have authority to
 - a. determine whether the revised contract, as filed, corrects the deficiencies as indicated at the hearing; and
 - b. send the parties a letter confirming approval of the contract.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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